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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/340,303	06/28/1999	FREDRIC GOLDSTEIN	227076/014	3730

7590 08/18/2004

FREDRIC GOLDSTEIN
VARMDOVAGEN 207
13141 NACKA,
SWEDEN

EXAMINER

KIM, EUGENE LEE

ART UNIT	PAPER NUMBER
3721	

DATE MAILED: 08/18/2004

35

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/340,303

Applicant(s)

GOLDSTEIN, FREDRIC

Examiner

Eugene L Kim

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>22</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The information disclosure statements filed 2/26/2004 and 3/2/2004 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered. The citations should be provided on a form PTO-1449 or PTO/SB/08A and 08B as discussed in MPEP 609.

Claim Rejections - 35 USC § 103

1. Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hinzmann (#3,962,957) in view of Focke (#4,385,479). Hinzmann shows delivery means 37, curling means 17 which are downstream from delivery means 17, feeding roller means 16, 28, 39 which are downstream from curling means 17 to feed the web to create curls. Hinzmann does not show the feeding means as claimed that are downstream from the curling means. Focke teaches the basic concept of using a pair of rollers 17, 18 that work in combination with conveying belt means 20, 21 to feed a web of material to create a reliable conveying and guiding of a web with severing in a simple manner (col 1 lines 45+). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Hinzmann with feeding means as taught by Focke to provide for reliable feeding means in a simplified manner. Regarding the functional language of the providing "tractive pull" as claimed, the examiner notes that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure

rather than function. See *in re Schreiber*, 128 F.2d 1473, 1477-78, 44 USPQ2d 1429, 1431-1432 (Fed Cir 1997)

2. Claims 28-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hinzmann in view of Focke as applied to claims above, and further in view of Goldstein (#5,407,417). Hinzmann in view of Focke do not show guide means to control the approach angle of the ribbon as claimed. However, Goldstein discloses varying the approach angle of a ribbon using guide means to determine the degree of curl imparted by a curling blade to obtain a desired curling effect (col 2 lines 60+). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to further provide Hinzmann in view of Focke with guide means as taught by Goldstein to obtain a desired curling effect. Goldstein discloses that the ribbon is typically made of polypropylene. Regarding particular characteristics to the actual product, such as, the ribbon comprising multiple strands of at least two different colors, the examiner notes that expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. See *ex parte Thibault*, 164 USPQ 666, 667 (Bd App 1969). Furthermore, inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims. See *in re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935). Regarding claims 32 and 37, these claims recite that the drive means "may have cutting blades". This limitation does not positively set forth any structure, as it is merely a capability type limitation.

3. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. In response to applicants argument regarding the references teaching away from applicants invention, the examiner disagrees with this contention. As stated supra, expressions relating to the contents do not impart patentability for apparatus claims. Applicant is also merely arguing the function of the structural means, such as the function of holding a web which does not impart patentability for apparatus claims as discussed supra.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene L Kim whose telephone number is 703 308-1886. The examiner can normally be reached on Tuesday-Friday 8 a.m. to 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eugene L Kim
Primary Examiner
Art Unit 3721